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ELECTION COMMISSION, INDIA.

1, AURANGAZEB ROAD, NEW DELHI.
Magha 21, 1879, Saka/February 10, 1958

NOTIFICATION.

No. 82/211/57.—WHEREAS the election of Sri P. T. Chacko as a member of the Legislative Assembly of the State of Kerala from the Vazhoor constituency of that Assembly was called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri N. Raghava Kurup, Advocate, Kuttickat House, Kottayam (Kerala State);

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

By order,

A. KRISHNASWAMI AIYANGAR,
Secretary to the Election Commission.

J

BEFORE THE ELECTION TRIBUNAL, ERNAKULAM.

FRIDAY, THE 31ST JANUARY 1958.

Present

SHRI C. KUNHI RAMAN, B. A. B.L., BARRISTER AT-LAW.

Judge, Election Tribunal.

Election Petition No. 211 of 1957.

SHRI RAGHAVA KURUP........................*Petitioner.*

By advocates Shri C. K. Sivasankara Panicker.

" T. C. N. Menon.
" T. Mani
" N. K. Bhaskaran Nair.

SHRI P. T. CHACKO.......................*1st Respondent.*

By advocates Shri T. P. Poulose.

" Abdul Rahiman.

2. Shri Shahul Hameed. 3. Shri Sankaran. *Respondents 2 and 3.*

Petition under section 81 (1) of the Representation of the People Act, 1951, praying 'that the' election of the first respondent to Kerala State Assembly from the Vazhoor Assembly Constituency be set aside and that the petitioner be declared duly elected to the Kerala State Assembly from Vazhoor Constituency, presented by registered Post before the Election Commission, India, on 23-4-1957 and referred to the Election Tribunal for disposal under section 86 of the Representation of the People Act, 1951.

This petition coming on for final hearing before the Tribunal at Durbar Hall, Ernakulam, on 30-1-1958 in the presence of Shri C. K. Sivasankara Panicker, advocate for the petitioner, and Shri T. P. Poulose, advocate for the 1st respondent and having stood over for consideration to this day the Tribunal delivered the following: —

The petitioner, Shri N. Raghava Kurup, is an advocate practising at Kottayam. He is also the Chairman of the Kottayam Municipal Council. The first respondent, Shri P. T. Chacko, is also an advocate practising at Kottayam. Both these gentlemen were duly nominated candidates for election to the Kerala State Legislative Assembly from the Vazhoor Constituency and they contested the election. The result of the polling was that the first respondent scored 80 votes more than the petitioner and he was consequently declared duly elected, the total votes secured by the first respondent being 20,102 and by the petitioner being 20,022. The second and third respondents had also attempted to stand for election, but they retired from the contest by giving notice to the returning officer ten days

before the date of polling (9-3-1957). They are impleaded as formal parties, according to the petitioner, and no specific relief is claimed against them in the petition.

2. As against the first respondent, the petitioner's case is that his election is illegal and void due to five main reasons which are set forth in the petition. These are:

(1) The voters' list contains 149 names which are set forth in Schedule I to the petition. These 149 persons are alleged by the petitioner to be minors on the qualifying date and consequently they were not competent to exercise their franchise. The petitioner's case is that all these 149 persons cast their votes in favour of the first respondent.

(2) Schedule II contains a list of 14 names one of which was given up at the time of the hearing of the petition. The remaining 13 persons are alleged to have died before 9-3-1957, the date on which polling took place in the Vazhoor Constituency. The petitioner states that ballot papers had been issued in the names of these deceased persons and that these ballot papers were also deposited in the box of the first respondent, evidently as a result of false personation. These votes, according to the petitioner, are void under the relevant provisions of the Constitution of India and the Representation of the People Act, 1950 and 1951, and the rules made thereunder.

(3) 20 names are given in schedule III to the petition. The petitioner's case is that these 20 persons were shown as voters in the final electoral roll of the Vazhoor Constituency and the final electoral rolls of other assembly constituencies as well. All these 20 people voted in the Vazhoor Constituency on 9-3-1957. The petitioner alleges that at the time of voting they had already exercised their franchise in other assembly constituencies and, therefore, their votes, which according to the petitioner were deposited in the box of the first respondent, must be declared to be void under section 62 (3) of the Representation of the People Act, 1951.

(4) 11 names are shown in schedule IV to the petition. According to the petitioner, these 11 names appear twice in the final electoral roll of the Vazhoor Constituency and all the 11 voted twice in the Vazhoor Constituency, their votes having been deposited in the box of the first respondent. These votes are also void under section 62 (4) of the Representation of the People Act, 1951.

(5). One name is given in the petition and it is that of voter No. 92 in the Electoral Roll of Ward IV of the Nedumkunnam Panchayat of the Vazhoor Constituency, the name of the voter being Maryamma Thomas. The petitioner alleges that this name was subsequently removed from the list by the Electoral Registration Officer of the Vazhoor Constituency and, therefore, the vote cast by this voter on 9-3-1957 in favour of the first respondent must be declared to be void.

3. Because of these five facts affecting the validity of the election, the petitioner states that he must be deemed to have obtained a majority of 114 votes as against the first respondent and instead of the first respondent being declared elected, the verdict must have been in favour of the petitioner.

4. In these circumstances, the petitioner prays that the election of the first respondent to the Kerala State Assembly from the Vazhoor Constituency be set aside, that the petitioner be declared elected to the State Assembly of Kerala from that constituency and for consequential reliefs.

5. In the written statement filed by the first respondent, these facts are denied. There is also a technical plea raised that the petitioner has not complied with the provisions of section 117 of the Representation of the People Act, 1951, because the Rs. 1000 deposited by him as security was not in favour of the Secretary to the Election Commission. It is, therefore, pleaded that the petition is not maintainable and must be dismissed.

6. With regard to Schedule I, the first respondent's case is that the registration of these persons as voters in the electoral roll is neither void nor illegal as they were entitled to vote at the election, the electoral roll being conclusive on the point. The first respondent does not admit that all of them voted for him. According to him, all these persons were duly qualified to vote. With regard to Schedule II, the first respondent denies that the persons mentioned therein are dead. According to him, some of them are still alive. He pleads that even if ballot papers were issued to them he does not admit that they cast their votes in the box provided for him. Regarding schedules III and IV, he denies that there is any duplication either in any other constituency or in the Vazhoor Constituency itself. He also denies the allegation regarding voter No. 92.

7. He pleads that the result of the election has not been materially affected as alleged by the petitioner. There are certain other allegations about irregularities in respect of the votes recorded in favour of the petitioner but these are not pressed in the special circumstances of this case which will be adverted to at the proper place.

8. The following issues were framed :—

(1) Has the petitioner complied with the provisions of section 117 of the Representation of the People Act, 1951? If not, is the petition liable to be dismissed for that reason?

(2) Had the persons mentioned in Schedule I to the petition not completed the age of 21 on the qualifying date as set forth in section 14-B of the Representation of the People Act, 1951? Did they cast their votes in favour of the first respondent as alleged in the petition?

(3) Is the Electoral Roll conclusive regarding the right to vote irrespective of the question as to whether the persons who are enumerated in that Roll had completed the age of 21 on the qualifying date?

(4) Were the persons mentioned in Schedule II to the petition dead before 9-3-1957? Were ballot papers issued in their names and were they deposited in the box of the first respondent?

(5) Did the persons mentioned in Schedule III to the petition vote in more than one Assembly constituency including the Vazhoor constituency? Did they vote for the first respondent in the Vazhoor Constituency?

(6) Did the persons mentioned in Schedule IV to the petition vote for the first respondent as alleged in paragraph 4, clause (d) of the petition and are their votes void for the reasons set forth in that clause?

(7) Was the name of voter No. 92 removed from the constituency list of ward V of the Nedumkunnam Panchayat of the Vazhoor constituency and did she vote for the first respondent after her name was removed from the voters' list as alleged in paragraph 4, clause (d) of the petition?

(8) Has the result of the election been materially affected as alleged in clause (F) of paragraph 4 of the petition?

(9) Is the first respondent debarred from raising the contentions contained in paragraphs 10 and 11 of the written statement for the reason that he has not complied with the terms of the proviso to section 97 of the Representation of the People Act?

(10) If the finding on issue No. 9 is in favour of the first respondent (1) had not the persons mentioned in Schedule A to the written statement completed the age of 21 on the qualifying date and did they vote for the petitioner? (2) Did the persons mentioned in Schedule B to the written statement die before 9-3-1957.? Were ballot papers issued in their names and were those ballot papers deposited in the box of the petitioner as alleged by the first respondent?

(11) Is the election of the first respondent liable to be declared void and is the petitioner entitled to a declaration that he has been duly elected?

9. At the final hearing, however, the first respondent's learned counsel argues that these issues need not be considered separately because the petitioner has failed to establish the main averments contained in the petition regarding the minority of some of the voters and the duplication of voting of the rest of them. In the circumstances, according to the first respondent's learned counsel, no occasion has arisen for entering upon any formal defence except to say that the case as set forth in the petition has not been substantiated, and therefore the petition must fail.

10. Since it was represented that many of the witnesses are residents in the vicinity of Kottayam the Tribunal may be pleased to arrange sittings at Kottayam to facilitate their evidence being available to the parties, 14 sittings were arranged at Kottayam. The petitioner himself gave his evidence at the head-quarters of the Tribunal at Ernakulam on 10th October 1957. On the 25th of January 1958, when the last sitting was held at Kottayam, witnesses that should have appeared did not come, mainly due to default in processes being duly served.

The petitioner and his learned counsel both represented that they would file a complete list of the remaining witnesses whom they wished to examine together with the batta for those witnesses on the 28th of January at Ernakulam before 5 p. m. in the office of the Tribunal at the Durbar Hall, in default of which they stated that the petitioner's case shall be deemed to have been closed. This undertaking was, however, not fulfilled by the petitioner. Neither the petitioner nor his advocates at Kottayam and Ernakulam appeared before the Tribunal to tender any explanation or excuse for this omission. The first respondent appeared by his advocate Mr. Poulose at whose request the case was adjourned to the 30th January. The Registrar of the Tribunal sent a telegram to the petitioner on the 29th pointing out the default committed by him in failing to file his list of remaining witnesses on the 28th and informing him that in accordance with the order passed at Kottayam on the 25th January he will be deemed to have closed his case. To this also there was no response. On the 30th January, however, Mr. Sivasankara Panickar, who was the learned counsel representing the petitioner in Ernakulam, appeared before the Tribunal and represented that he had not obtained any information from his client as to why the direction contained in the order passed at Kottayam on the 25th January was not complied with and he left the matter in the hands of the Tribunal. The first respondent's learned counsel stated that since the evidence on record had not established the reasons given in the petition in support of the prayer for setting aside the election of the first respondent, there was no need for him to call any evidence and that he was prepared to argue on the basis of the evidence already on record. However, he examined his client, the first respondent, as a witness and closed his case. He accordingly addressed arguments. The petitioner's learned counsel had nothing to say because he was left in the lurch by his client and was not in a position to throw any light on the case. The order that was dictated before the first respondent's learned counsel addressed arguments is worded as follows which explains the position:

"Petitioner's learned counsel, Mr. C. K. Sivasankara Panickar, appears and states that he has nothing further to add to what has already been submitted by the petitioner on 25-1-1958 at Kottayam. The first respondent appears in person with his learned counsel, Mr. Poulose and his junior Mr. Abdulkadir who was appearing for the first respondent at hearings at Kottayam. Mr. Poulose represents that he wishes to examine only the first respondent and his evidence is recorded. The first respondent's learned counsel does not wish to call any more evidence and he closes his case. Mr. Abdulkadir, one of the counsel appearing for the respondent, who is an advocate practising at Kottayam states that until 3 p. m yesterday he had seen the petitioner, Mr. Raghava Kurup in the Sessions Court where he was appearing for a client of his. He also represents that he learned from Mr. Bhaskaran Nair, counsel for the petitioner,

who appeared for him at the hearings at Kottayam, that the petitioner had not sent any list of witnesses or batta for those witnesses on 28th January, as promised".

11. This was not the only occasion when the petitioner had failed to discharge his duty in respect of the averments contained in the petition.

12. On the 12th December 1957, it was clear that the petitioner was not taking any steps to prosecute this petition and, therefore, a notice was served on him to show cause why appropriate orders should not be passed for want of prosecution of the petition in case he failed to take action within one week. Thereupon, his advocate at Ernakulam represented on the 23rd December that the petitioner, owing to his illness, was prevented from prosecuting the petition and that an opportunity may be afforded to him to summon witnesses. Accordingly, the case was posted to 15-1-1958 for recording the depositions of witnesses at Kottayam. On the 15th, 16th and 17th January, 13 witnesses who were summoned on behalf of the petitioner were examined and their depositions recorded at Kottayam. The next sittings at Kottayam were on the 23rd, 24th and 25th January, when 14 witnesses who were summoned were also examined on the 23rd and 24th. But, as already stated, no witness appeared on the 25th.

13. It will thus be seen that sufficient indulgence was given to the petitioner overlooking his latches in prosecuting the petition and in spite of that, although he definitely promised to supply a complete list of his remaining witnesses by the 28th January at Ernakulam he failed to do. In the circumstances, since not even an explanation was forthcoming as to why he did not discharge his obligations on the 28th January, the request of the first respondent's learned counsel to adjourn the case to the 30th was granted and what transpired on the 30th is already recorded.

14. It will be seen from the petition that there is no allegation of any corrupt practice. It is not suggested that the first respondent or his agents were responsible for registering unqualified persons in the voters' list or that he (the first respondent) was responsible directly or indirectly for having the votes of deceased persons recorded after false personation at the polling booths. In the circumstances the only question for consideration is whether a case has been made out that at least 80 voters who voted at the election were disqualified. The total number of persons who were proved to have been disqualified by the 46 witnesses examined on behalf of the petitioner who were not competent or qualified to vote came to not more than 58 which will not in any way support the case of the petitioner since the difference in votes secured by the petitioner and the first respondent was 80. The attempt made to establish that some more persons were disqualified on the ground of minority did not succeed owing to the names appearing in the school registers not tallying with the names in the voters' list or for the reason that there was no

verification by the legal guardians of students admitted into schools of their respective dates of birth.

15. In these circumstances, the outline of the case narrated in the petition has not been made out and there is no reason for declaring that the petitioner has secured a sufficient number of votes to defeat the first respondent in the election. The petition must therefore fail for that reason alone.

16. In his evidence the first respondent has sworn that he had made careful enquiries about the allegations contained in the petition that certain voters were minors on the qualifying date, that certain voters were dead before the date of polling and that certain voters had exercised their franchise in two constituencies and certain others at two polling booths in the Vazhoor constituency. He was satisfied, on making enquiries, that these averments contained in the petition are not true. He fully supports the statements contained in the written statement filed by him. He adds that he is personally acquainted with one of the voters alleged to be dead and that to his personal knowl dge that statement is not correct. This evidence indicates that there was no fraud practised by the first respondent or his agents in respect of the so-called irregularities alleged in the petition.

17. The technical point raised on behalf of the first respondent has, in my view, no substance, since after the Tribunal started hearing the petition another sum of Rs. 1000 was deposited by the petitioner in strict accordance with the provisions of section 117 of the Representation of the People Act, 1951. The petitioner having substantially complied with the provisions of section 117 of the Representation of the People Act, I do not consider that the technical defect is fatal to the maintainabilityof the petition, the Election Commission itself not having dismissed the petition and having left the question open as to whether the defect in the deposit is fatal or not for determination by the Tribunal. I hold that the defect is not a fatal defect.

18. On the merits, however, since the case with which the petitioner has come to this Tribunal has not been made out and since on the evidence of the witnesses examined on behalf of the petitioner the first respondent has got a majority of votes the petition must be dismissed. In the circumstances, it is not necessary to consider the various issues separately.

19. The petition is accordingly dismissed with costs which I fix at a consolidated sum of Rs. 525 including advocates' fee and the costs awarded in Interlocutory Application No. 1 of 1958 for amendment of the petition which was presented at Kottayam.

C. Kunhi Raman,
Judge, Election Tribunal,
Ernakulam.

31st January 1958.

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